PT 04-22
Tax Type: Property Tax
Issue: Educational Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

KENDALL COLLEGE, APPLICANT		
v.	**Nos.**	**03-PT-0010 (01-16-2852)**
ILLINOIS DEPARTMENT OF REVENUE	**P.I.N.S:**	**11-07-110-007**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Jeffery Jahns of Seyfarth Shaw on behalf of Kendall College (the "applicant"); Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Illinois Department Of Revenue (the "Department").

SYNOPSIS: This proceeding raises the limited issue of whether real estate identified by Cook County Parcel Index Number 11-07-110-007 (the "subject property") was used "exclusively for school purposes," as required by 35 **ILCS** 200/15-35(b), during any part of the 2001 assessment year. The underlying controversy arises as follows:

The applicant filed a Property Tax Exemption Complaint with the Cook County Board of Review, which reviewed applicant's complaint and recommended to the Department that the requested exemption be granted *in toto*. The Department rejected the Board's recommendation pursuant to an initial determination, dated November 27, 2002, which found that the entire subject property is not in exempt use.

Applicant filed an appeal to this determination and later presented evidence at a formal evidentiary hearing, at which the Department also appeared. Following a careful review of the record made at hearing, I recommend that the Department's initial determination be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this case and its position herein are established by the admission of Dept. Group Ex. No. 1, Documents A, B, C.
2. The Department's position in this case is that the subject property is not in exempt use. Dept. Group Ex. No. 1, Document C.
3. The subject property is located in Evanston, IL and improved with a 3,051.5 square foot building (the "building improvement"). Dept. Group Ex. No. 1, Document B.
4. The Department has exempted other properties owned by the applicant from real estate taxation pursuant to determinations in docket numbers 86-16-336 and 97-16-1149. Administrative Notice of Departmental Records.
5. Applicant and the Department have stipulated to the following facts:
   A. The applicant obtained ownership of the subject property by means of a trustee's deed dated December 8, 1999. Stipulation, ¶¶ 1, 2;
   B. The subject property is located on the same block as several other properties that the applicant owns. Stipulation, ¶ 3;
   C. All of the other properties situated on this block, except the subject property, are exempt from real estate taxation. *Id*;
   D. The subject property is located in an area that is approved for educational uses under the Evanston Zoning Ordinance. Stipulation, ¶4.

6. The building improvement contains a basement and three upper-level floors.[1] Applicant Ex. Nos. 1, 2.

7. Applicant used the basement level to store tin foil, plastic lids and other items used at its culinary school throughout 2001. Tr. p. 14.

8. The first floor was used to hold an unspecified number of fundraising meetings hosted by applicant's president. Tr. pp. 14-15.

9. The second floor, which contains four separate bedrooms, was used to host and provide lodgings to an unspecified number of visiting faculty members. Applicant Ex. No. 1; Tr. p.15.

10. The third floor, which contains one bedroom, a large attic and closet space, was not used at all. Applicant Ex. No.1; Tr. pp.15, 16.[2]

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-35(b) of the Property Tax Code, wherein "property of schools on which the schools are

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1. I have not made any Findings of Fact relative to the dimensions of the basement, first, second and third floor areas for two reasons. First, I cannot make any such findings relative to the basement, first and third floor areas because the record does not contain any evidence that identifies the dimensions of these areas. *See*, Applicant Ex. No. 1, Tr. pp. 13-18.

Second, although the floor plan (Applicant Ex. No. 1) does contain dimensions for most of the second floor areas, analysis found *infra*, at pp. 6-7, demonstrates that the applicant has, for other reasons, failed to prove that any of the second floor area was in exempt use. Therefore, it would be superfluous to make any Findings of Fact relative to the dimensions of the second floor area.

2. The uses described in this and all subsequent Findings of Fact shall be understood to be uses taking place in 2001 unless the context clearly specifies otherwise.

located and any other property of schools used by the schools exclusively for school purposes" is exempted from real estate taxation. 35 **ILCS** 200/15-35(b).

The statutory requirements for this exemption are: (1) exempt ownership, which means that the property must be owned by a duly qualified "school"[3] (Wheaton College v. Department of Revenue, 155 Ill. App.3d 945 (2nd Dist. 1987)); and, (2) exempt use, which means that the property must be "exclusively" or primarily used for "school"-related purposes. (People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944)).

There is presently no dispute that the applicant, a duly qualified "school," owned the subject property throughout the tax year currently in question, 2001. However, the issue of whether the applicant actually used any part of the subject property for qualifying "school"-related purposes during any part of that tax year is very much in dispute.

Where real estate is used for multiple purposes, and can be divided according to specifically identifiable areas of exempt and non-exempt use, it is proper to exempt those parts that are in actual, exempt use and subject the remainder to taxation. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 64 (1971).

This particular subject property can be divided into four distinctly identifiable areas: (1) the basement, which was used for storage; (2) the first floor, which was used to host an unspecified number of fundraising meetings; (3) the second floor, which was used

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3. The legal definition of the term "school" is, for property tax purposes, as follows:

> A school, within the meaning of the Constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptation [sic] of the word.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 137 (1911).

to host and provide lodgings to an unspecified number of visiting faculty members; and, (4) the third floor, which was not used at all.

The most important principles to be applied in analyzing whether any of these areas was primarily used for "school"-related purposes during 2001 are that: (1) the word "exclusively" when used in Section 15-35 and other exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." (Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993); Northern Illinois University Foundation v. Sweet, 237 Ill. App.3d 28 (2nd Dist. 1992)); (2) the applicant's actual, rather than intended uses, are ultimately determinative on the question of exempt use (Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994)); and, (3) the applicant bears the burden of proving all elements of its exemption claim, including exempt use, by a standard of clear and convincing evidence. (People *ex rel*. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987); Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994)).

The clear and convincing standard is met when the evidence is more than a preponderance but does not quite approach the degree of proof necessary to convict a person of a criminal offense. Bazydlo v. Volant, 264 Ill. App.3d 105, 108 (3rd Dist. 1994). Thus, "clear and convincing evidence is defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question." In the Matter of Jones, 285 Ill. App.3d 8, 13 (3rd Dist. 1996); In

re Israel, 278 Ill. App.3d 24, 35 (2nd Dist. 1996); In *re* the Estate of Weaver, 75 Ill. App.2d 227, 229 (4th Dist. 1966)).

This record leaves several questions in my mind regarding the extent to which any of the space within the basement, first and second floors was actually used for "school" related purposes. Specifically, the record does not contain any evidence that would allow me to discern the exact dimensions of the basement area, either in terms of square footage or a percentage of the building improvement as a whole. Absent evidence that identifies the basement area with this type of specificity, the evidence that the applicant did submit, which only identifies the basement as being part of the building improvement,[4] is unacceptably general. Accordingly, although storage of materials used in connection with applicant's culinary arts program might constitute a qualifying exempt use in most circumstances (Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991)), this particular record leaves me unable to fashion a partial exemption that accurately reflects the amount of space the applicant actually used for this purpose in 2001. Therefore, the portion of the Department's determination that pertains to the basement area should be affirmed.

The portions of the record that pertain to the first and second floor areas are also unacceptably conclusory, but in different respects. Concerning the first floor, the record contains absolutely no evidence that identifies the number of "school"-related fundraisers that applicant held on the first floor during 2001. Nor does it contain any evidence that identifies the dates and times of whatever fundraising activities applicant actually held on the first floor in 2001. Because of these deficiencies, the applicant has failed to prove by

4. *See*, Applicant Ex. No. 1.

the requisite clear and convincing evidence that the first floor was actually and primarily used as a venue for "school"-related fundraisers during the tax year in question.

The record also contains a similar set of evidentiary deficiencies relative to the second floor, which was ostensibly used to host and provide lodging to an unspecified number of visiting faculty members. Because the number of visiting faculty members that actually stayed on the second floor is unspecified, and the record fails to disclose many other important details concerning the dates on which these visiting faculty members stayed at the second floor, their lengths of stay and the nature of any classes they taught or lectures they gave while in residence, the record once again fails to clearly and convincingly prove that the second floor was, in fact, primarily used for school-related purposes. Thus, for all the above-stated reasons, the parts of the Department's initial determinations concerning the first and second floors should be affirmed.

With respect to the third floor, it is briefly noted that this part of the subject property was not actively used for any purpose whatsoever during the tax year currently in question. Consequently, the entire third floor does not qualify for exemption under Section 15-35 because it was totally vacant all through 2001. *Accord*, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was intended for religious use but completely vacant throughout the tax year in question held non-exempt). Therefore, the part of the Department's determination pertaining to the third floor should be affirmed.

Based on the above, I conclude that applicant has failed to prove that any specifically identifiable portion of the building improvement was actually and exclusively used for "school"-related purposes, as required by 35 **ILCS** 200/15-35, during the 2001

assessment year. Rather, the most that the applicant has proven is that the second and third floors of this building were actually used for qualifying "school" purposes on what, in the absence of evidence to the contrary, can only be described as a highly irregular, periodic, and therefore, incidental basis.

Once again, the word "exclusively" when used in Section 15-35 and other exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993); Northern Illinois University Foundation v. Sweet, 237 Ill. App.3d 28, 35-38 (2nd Dist. 1992). At best, this record proves only that some parts of the subject property were incidentally used for "school"-related purposes at unspecified and irregular intervals during the 2001 assessment year.

Moreover, it is the applicant's actual use of the subject property itself, and not any properties that surround it, that is ultimately decisive for present purposes. Lutheran Church of the Good Shepherd of Bourbonnais v. Illinois Department Of Revenue, 316 Ill. App.3d 828 (3rd Dist. 2000). Therefore, the mere fact that the subject property is located in the midst of other tax-exempt properties owned by the applicant is of no significance herein. *Id*.

The same may be said with respect to the fact that the subject property is situated in an area that is zoned for what the stipulation describes as "educational uses." At best, this fact only proves that it was legally possible for the applicant to use the subject property for "school"-related purposes. It does not, however, prove that the applicant actually used this property for such purposes during 2001.

Only actual uses are decisive for present purposes. Skil Corporation v. Korzen, *supra*; Comprehensive Training and Development Corporation v. County of Jackson, *supra*. Therefore, the fact that it was legally permissible for applicant to engage in qualifying uses does not, *ipso facto*, alleviate the necessity for appropriate evidence proving that the subject property was, in fact, primarily used for "school"-related purposes during 2001. *Id*; Northern Illinois University Foundation v. Sweet, *supra* at 35-38.

The record before me does not contain an appropriate level of evidence with respect to the first and second floors. Nor does it prove that the third floor was actually used for any purposes, tax exempt or otherwise, throughout the tax year currently in question. Neither does it contain measurements that identify the dimensions of the basement area with the type of specificity that is necessary to sustain an exemption for this area.

In light of all these deficiencies, I must conclude that the level of proof contained in this record does not satisfy the standard of clear and convincing evidence that applies without exception in all property tax exemption cases. People *ex rel*. Nordland v. Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*. Therefore, the Department's initial determination in this matter should be affirmed.

WHEREFORE, for the reasons set forth above, I recommend that real estate identified by Cook County Parcel Index Number 11-07-110-007 not be exempt from 2001 real estate taxes.

Date: 7/15/2004

Alan I. Marcus
Administrative Law Judge